No. 07-287

In the Supreme Court of the United States

MARK RADER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

PAUL D. CLEMENT
Solicitor General
Counsel of Record
Department of Justice
Washington, D.C. 20530-0001
(202) 514-2217

In the Supreme Court of the United States

No. 07-287

MARK RADER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

OPINIONS BELOW

Petitioner contends that the standards applied by the court of appeals in reviewing his within-Guidelines sentence for unreasonableness are inconsistent with *United States* v. *Booker*, 543 U.S. 220 (2005). On June 11, 2007, this Court granted certiorari in *Gall* v. *United States*, No. 06-7949, to address the standards to be applied in reviewing a sentence outside the Guidelines for unreasonableness under *Booker*. Petitioner challenges the requirement that is before the Court in *Gall*: that a sentence constituting an extraordinary variance from the Guidelines be supported by a substantial justification. Although that principle is not directly implicated in this case, the decision in *Gall* is likely to clarify the extent of a district court's sentencing discretion under *Booker* and therefore may shed light on the proper disposition of

petitioner's claim. Accordingly, the Court may wish to hold the petition for a writ of certiorari pending its decision in *Gall*, and then dispose of the petition as appropriate in light of the decision in that case.*

Respectfully submitted.

PAUL D. CLEMENT
Solicitor General

SEPTEMBER 2007

---

* The government waives any further response to the petition unless this Court requests otherwise.